

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

JOEL P. MOYER, et al.,	)	Case No. C-1-01-140
	:	
Plaintiffs,	)	(Judge Weber)
	:	
-v-	)	PLAINTIFFS' MOTION FOR LEAVE TO
	:	<u>FILE THIRD AMENDED COMPLAINT</u>
PEOPLE TO PEOPLE	)	
INTERNATIONAL, INC., et al.,	:	
	:	
Defendant.	)	
	:	

Plaintiffs hereby move the Court for leave to file a Third Amended Complaint in this matter. As will be set forth in the attached memorandum, Plaintiffs wish to amend their Complaint to streamline and clarify the allegations against the remaining defendants, and to add allegations of fact learned through discovery and a claim for punitive damages. A proposed Third Amended Complaint is attached hereto.

Respectfully submitted,

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## **MEMORANDUM**

### **I. INTRODUCTION**

As the Court is aware, this case is a personal injury action brought by Plaintiff, Joel Moyer and his parents, David and Marcia Moyer, to recover damages arising out of a molestation of Joel while in the custody of Defendant Ambassador on a trip to the United Kingdom in July 1999. This molestation ultimately lead Joel to attempt to commit suicide on the early morning hours of December 31, 1999. The case was originally filed in Hamilton County Common Pleas Court, and removed to this Court by Defendant World Learning, Inc., a defendant which has since been dismissed.

At the time the initial Complaint was filed, the identity of the parties, their interrelationships and roles in making arrangements for the People to People Student Ambassador trip in 1999 were not known. After filing the initial Complaint, Plaintiffs learned that there was an additional defendant, Ambassador Programs, Inc., which used the People to People name under a license. The Complaint was amended to name Ambassador Programs, Inc. as a defendant. Subsequently, Plaintiffs amended the Complaint a second time to name as a nominal defendant Humana/ChoiceCare, the Third Party Administrator (and assignee) of Plaintiffs' health benefits plan.

Since the filing of the Second Amended Complaint, the parties have engaged in and essentially completed discovery, and the parties filed cross-motions for summary judgment. The Court recently ruled on the cross-motions for summary judgment, and made some important determinations which significantly impact the complexion of this case. The Court also granted summary judgment in favor of Defendant People to People International, Inc.

Because of these important determinations, Plaintiffs wish to amend their Complaint to clarify and streamline the allegations against Ambassador Programs, Inc., and to add allegations

of facts learned through discovery and a claim for punitive damages. The additional allegations and claim for punitive damages are justified based on the facts learned in discovery, and law established in this case.

## II. ARGUMENT

Rule 15 of the Federal Rules of Civil Procedure requires that leave of court be obtained prior to amending a pleading. Such leave to amend “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). “[T]he thrust of Rule 15 is to reinforce the principle that cases ‘should be tried on their merits rather than the technicalities of pleadings.’” *Moore v. City of Paducah*, 790 F.2d 557, 559 (6<sup>th</sup> Cir. 1986); (quoting *Tefft v. Seward*, 35 F. 2d 637 (6<sup>th</sup> Cir. 1982)).

In the case before this Court, there will be no prejudice to the defendants in allowing the amended complaint. Discovery has been exchanged and completed, and the additional allegations are of facts learned from defendants and other witnesses in the discovery process. Rule 15 and cases interpreting that rule uniformly recite the liberality in allowing amendments to complaints, and require a significant showing of prejudice before a request for leave can be properly denied. See *Moore v. City of Paducah*, 790 F.2d 557, 562 (6<sup>th</sup> Cir. 1986); and *Tefft v. Seward*, 35 F. 2d 637, 639-640 (6<sup>th</sup> Cir. 1982). Although Defendant Ambassador Programs, Inc. may object to the additional claim for punitive damages, the facts supporting such a claim have been before it and known to it for some time. During the course of discovery and briefing the cross-motions, however, it became apparent to Plaintiff that this case involves more than mere negligence. Indeed, Ambassador Programs’ steadfast insistence that it owed no duty to Plaintiffs clarified the continuing willful and wanton careless attitude toward its teenage program participants, as well as its conscious disregard for the rights of others.

Allowing the amendment will not prejudice Ambassador Programs, Inc. because there are no new facts to introduce, and the amendment will not cause any need for additional discovery. The additional factual allegations concern facts known to Defendant Ambassador Programs, Inc., but only revealed to Plaintiffs through the discovery process. *See Thomas vs. Medesco*, 67 F.R.D. 129 (E.D. Pa. 1974) (amendment adding punitive damage claim at late date allowed where no new facts introduced). Although this case has been pending for some time, the amendment is permitted under the liberal standard for amendments under F.R.C.P. 15. *Id.* *See also Howard v. Kerr Glass Mfg. Co.*, 699 F.2d 330 (6<sup>th</sup> Cir. 1983) (plaintiff filing negligence claim should have been granted leave of court to add warranty claim at trial when defendant had been given notice that warranty claim would be asserted); *General Electric Co. v. Sargent & Lundy*, 916 F.2d 1119 (6<sup>th</sup> Cir. 1990) (trial court abused discretion in not allowing amendment to pleadings three days before trial); *Tefft v. Seward*, 689 F.2d 637 (6<sup>th</sup> Cir. 1982) (trial court abused discretion in refusing to allow amendment to complaint). The liberal standard for amendment permits an amendment to the complaint under these circumstances.

### III. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court grant their motion, and allow them leave to file their Third Amended Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT was served upon this 16 day of April, 2004 by electronic mail upon:

Robert Hanseman, Esq.  
Martin Beyer, Esq.  
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and by regular U.S. mail upon:

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/s/ Peter J. Stautberg  
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